

1 Lauren S. Wulfe (SBN 287592)
ARNOLD & PORTER KAYE SCHOLER LLP
2 777 South Figueroa Street, Forty-Fourth Floor
Los Angeles, California 90017
3 Telephone: 213-243-4000
Facsimile: 213-243-4199
4 Lauren.Wulfe@arnoldporter.com

Paul W. Rodney (*admitted pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
1144 15th Street, Suite 3100
Denver, CO 80202
Telephone: 303-863-1000
Facsimile: 303-832-0428
Paul.Rodney@arnoldporter.com

5 John C. Massaro (*admitted pro hac vice*)
Daphne O'Connor (*admitted pro hac vice*)
6 Jason A. Ross (*admitted pro hac vice*)
David E. Kouba (*admitted pro hac vice*)
7 ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave, NW
8 Washington, DC 20001
Telephone: 202-942-5000
9 Facsimile: 202-942-5999
10 John.Massaro@arnoldporter.com
Daphne.OConnor@arnoldporter.com
11 Jason.Ross@arnoldporter.com
David.Kouba@arnoldporter.com

Angela R. Vicari (*admitted pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019
Telephone: 212-836-8000
Facsimile: 212-836-8689
Angela.Vicari@arnoldporter.com

12 Moira K. Penza (*admitted pro hac vice*)
13 WILKINSON STEKLOFF LLP
14 130 West 42nd Street, 24th Floor
15 New York, NY 10036
Telephone: 212-294-8910
15 mpenza@wilkinsonstekloff.com

Beth A. Wilkinson (*admitted pro hac vice*)
Brian L. Stekloff (*admitted pro hac vice*)
James M. Rosenthal (*admitted pro hac vice*)
Matthew R. Skanchy (*admitted pro hac vice*)
WILKINSON STEKLOFF LLP
2001 M Street NW, 10th Floor
Washington, DC 20036
Telephone: (202) 847-4000
bwilkinson@wilkinsonstekloff.com
bstekloff@wilkinsonstekloff.com
jrosenthal@wilkinsonstekloff.com
mskanchy@wilkinsonstekloff.com

16 Attorneys for Defendants Altria Group, Inc.,
17 Philip Morris USA Inc., Altria Client Services LLC,
and Altria Group Distribution Company

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

22 IN RE: JUUL LABS, INC., MARKETING,
23 SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No.: 19-MD-02913-WHO

**ADMINISTRATIVE MOTION TO FILE
UNDER SEAL EXHIBIT 6 TO THE
ALTRIA DEFENDANTS' MOTION TO
EXCLUDE PLAINTIFF'S EXPERTS**

This Document Relates to:

26 *San Francisco Unified School District v.
JUUL Labs, Inc., et al.*

1 **TO THE COURT, THE PARTIES, AND ALL COUNSEL OF RECORD:**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Altria Group, Inc., Philip Morris USA Inc.,
 3 Altria Client Services LLC, and Altria Group Distribution Company (collectively, the “Altria
 4 Defendants”) hereby give notice of their Administrative Motion to File Under Seal Exhibit 6 to
 5 Altria Defendants’ Motion To Exclude Plaintiff’s Experts filed August 15, 2022.

6 **I. COMPLIANCE WITH STANDING ORDER AND CIVIL LOCAL RULE 79-5**

7 The Altria Defendants certify that they have reviewed and complied with Judge Orrick’s
 8 Standing Order on Administrative Motions to Seal, as well as Civil Local Rule 79-5.

9 **II. MATERIAL TO BE FILED UNDER SEAL**

10 The Altria Defendants request an order granting their motion to file under seal the materials
 11 described in the following table or, as applicable, certain redacted portions of the materials described
 12 in the following table:

13 Document	14 Description	15 Designating Party¹
16 Exhibit 6	17 A compilation of Statements of Work, Distribution Support Services, between Altria Group Distribution Company and JUUL Labs, Inc., Bates numbers 5159966278; 5159966325; 5159966302; JLI01339889- JLI01339902.	18 Altria Defendants

19 The document identified in the table above contains information that was designated
 20 confidential or highly confidential by the Altria Defendants under the Stipulated Protective Order
 21 (ECF 1282). The document contains information that is confidential or competitively sensitive. In
 22 this Motion, the Altria Defendants respectfully seek to file under seal portions of Exhibit 6 to protect
 23 confidential or competitively sensitive information from public disclosure.

24 **II. BASIS FOR REQUEST TO FILE UNDER SEAL**

25 A party seeking to seal materials must provide “compelling reasons” to do so. *Kamakana v.*
 26 *City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). The Ninth Circuit has recognized
 27 that compelling reasons to seal information exist when public disclosure of the information might

28 ¹ Exhibit 6 also contains material designated confidential by other parties and is included in the
 Altria Defendants’ concurrently filed Administrative Motion to Consider Whether Another Party’s
 Material Should Be Sealed.

1 harm a party's "competitive standing." *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008)
 2 (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)). There also may be
 3 compelling reasons to seal materials that contain proprietary information, confidential business
 4 strategy, or similar documents, the disclosure of which "would result in harm to [the designating
 5 party's] business." *Tryfonas v. Splunk*, No. 17-cv-01420-HSG, 2018 WL 3077762, at *2 (N.D. Cal.
 6 2018).

7 There are compelling reasons to grant the Altria Defendants' request to redact and/or seal
 8 this document. This document contains confidential, competitively sensitive, and proprietary
 9 business information, including confidential business strategy, details relating to business
 10 operations, and industry analysis and intelligence. *See* Declaration of Angela R. Vicari in Support
 11 of the Altria Defendants' Administrative Motion to Seal; Declaration of Elizabeth O'Hara in
 12 Support of Maintaining Information Under Seal, dated June 10, 2022, ¶ 9, ECF No. 3281-4. The
 13 Exhibit has thus been designated as confidential or highly confidential under the Stipulated
 14 Protective Order in order to protect this confidential, nonpublic, and competitively sensitive
 15 information.

16 Courts routinely seal similar confidential, competitively sensitive information. *See, e.g., In*
 17 *re Electronic Arts, Inc.*, 298 Fed. App'x 568, 569 (9th Cir. 2008) (finding compelling reasons to
 18 seal pricing terms, royalty rates, and guaranteed minimum payment terms); *Ehret v. Uber Techs., Inc.*,
 19 2015 WL 12977024, at *2 (N.D. Cal. 2015) (granting motion to seal Uber's "sensitive,
 20 proprietary business strategy and financial information"); *Entm't USA, Inc. v. Moorehead Commc'ns, Inc.*,
 21 2015 WL 1279721, at *17 (N.D. Ind. 2015) (sealing documents containing "non-
 22 public financial and business information"); *Rodman v. Safeway, Inc.*, 2013 WL 12173601, at *2
 23 (N.D. Cal. 2013) (sealing "valuable internal information not otherwise made available to the public
 24 regarding Safeway.com's pricing strategies, pricing methodology, internal business strategy, and
 25 financial performance, as well as transaction and customer data"); *Transperfect Glob., Inc. v. Motionpoint Corp.*,
 26 2013 WL 209678, at *1 (N.D. Cal. 2013) (sealing document containing
 27 "proprietary information about Transperfect's business operations and technology"); *Apple, Inc. v. Samsung Electronics Co.*, 2012 WL 4933287, at *1 (N.D. 2012) (observing that sealing is required

1 to “prevent judicial documents from being used ‘as sources of information that might harm a
 2 litigant’s competitive standing’”) (citation omitted); *TriQuint Semiconductor, Inc. v. Avago*
 3 *Technologies Ltd.*, 2011 WL 6182346, at *6 (D. Ariz. 2011) (finding compelling reasons to seal
 4 business strategy information from disclosure). The Court should do the same here. Indeed, this
 5 Court already granted a motion to seal portions of documents similar as those submitted as Exhibit
 6. *See* ECF No. 1863 (granting motion to seal portions of Statements of Work, including specifically
 7 pages JLI01339888 and JLI01339880-81).

8 Accordingly, the Altria Defendants respectfully submit that compelling reasons exist for
 9 redacting portions of Exhibit 6 to the Altria Defendants’ August 15, 2022 Motion to Exclude
 10 Plaintiff’s Experts. The Altria Defendants have complied with Civil Local Rule 79-5. An
 11 unredacted version of this Exhibit is attached hereto.

12 Pursuant to Local Rules 79-5, the Altria Defendants, as the Designating Parties, bear
 13 responsibility to establish that all of the designated material is sealable. However, certain of the
 14 material at issue in the Altria Defendants’ instant Motion to Seal also relate to material designated
 15 confidential by Plaintiffs or other parties. The Altria Defendants are including such material in its
 16 concurrently filed Administrative Motion to Consider Whether Another Party’s Material Should Be
 17 Sealed as required by Local Rule 79-5(f)(5). As required by Civil Local Rule 79-5, the following
 18 attachments accompany this motion:

- 19 1. The Declaration of Angela R. Vicari in Support of the Altria Defendants’ Administrative
 20 Motion to Seal;
- 21 2. A copy of the unredacted document highlighted with the proposed redactions filed attached
 22 as Exhibit A; and
- 23 3. A Proposed Order that lists in tabular format each document sought to be sealed.

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1 Dated: August 15, 2022

Respectfully submitted,

2 ARNOLD & PORTER KAYE SCHOLER LLP

3 By: /s/ Angela R. Vicari

4 Angela R. Vicari (*admitted pro hac vice*)
5 John C. Massaro (*admitted pro hac vice*)
6 Daphne O'Connor (*admitted pro hac vice*)
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15 Moira K. Penza (*admitted pro hac vice*)
16 Matthew R. Skanchy (*admitted pro hac vice*)

17 Attorneys for Defendants ALTRIA GROUP,
18 INC., PHILIP MORRIS USA INC., ALTRIA
19 CLIENT SERVICES LLC, and ALTRIA
20 GROUP DISTRIBUTION COMPANY

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CERTIFICATE OF SERVICE

I, Angela R. Vicari, hereby certify that on the 15th day of August, 2022, I electronically filed the foregoing **ADMINISTRATIVE MOTION TO FILE UNDER SEAL EXHIBIT 6 TO THE ALTRIA DEFENDANTS' MOTION TO EXCLUDE PLAINTIFF'S EXPERTS** with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notifications to all counsel of record.

By: /s/ *Angela R. Vicari*

Angela R. Vicari (*admitted pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019
Telephone: 212-836-8000
Facsimile: 212-836-8689
Angela.Vicari@arnoldporter.com